Supreme Court U.S.
FILED
96 657 OCT 25 1996
OFFICE OF THE CLERK

NO. 96_____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

CARIE MARIE MARTIN,
Petitioner,

vs.

ROBERT P. CASEY, Governor;
DOUGLAS K. TOBIN, Director,
Bureau of Driver Licensing,
Dept. Of Transportation

Respondents,

Petition For Writ Of Certiorari
To the United States Court Of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

CARIE MARIE MARTIN
1 BOX 670 SIMPSON ROAD
GLEN ROCK, PA 17327
Mailing address:
P.O. BOX 651
MANCHESTER, MD 21102

29 pp

QUESTIONS PRESENTED

(1) Whether appellant Martin is required by any law to apply for a security account number other than to receive bernefits.

(2) Whether appellant Martin can be denied any rights or privileges as a result of failing to apply for such number.

(3) Whether a social security account number is necessary in order to work and live in this country.

(4) Whether anyone must give up one right or privilege in order to secure another right or privilege

(5) Whether the Pennsylvania Department of Transportation must provide "other identifiers" in accordance with 75 Pa.C.S. § 1510 (f) for those who do not possess a social security account number.

LIST OF PARTIES

All parties are listed on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

LIST OF PARTIES.....ii

TABLE OF CONTENTS.....iii

TABLE OF CITATIONS.....iv

OPINIONS BELOW.....1

JURISDICTION.....1

STATUTORY PROVISIONS..... 1

STATEMENT OF THE CASE 3

ARGUMENT:

A. Background of the Social Security Act.....2

B. Voulntary Nature of Social Security.....3

C. Whether Regulations Can Expand a Statute.....4

D. Social Security as a Contract.....5

E. Statutory Construction.....6

CONCLUSION.....8

TABLE OF AUTHORITIES

Cases Page

Helvering v. Davis, 301 US 619 (1937).....2,3,5

Home Bldg. & L. Asso. v. Blaisdell, 290 U. S. 398, 442, 78 L. ed. 413, 431, 54 S. Ct. 31.....2

Chas. C. Steward Mach. Co. 301 U. S. 548, ante, 1279, 57 S. Ct. 883, 109 A.L.R. 1293.....2,3

Flemming v. Nestor, 363 US 603, p. 603, 4 L Ed 2d 1435.....5

FCC v. Beach Communications, Inc., 580 U.S. ___ , 113 S.Ct 2096.....6,7

Railroad Retirement Board, et al., Petitioners, v. Alton Railroad Company, et al., 295 U. S. 330, p 368,.....4

STATUTES

28 U.S.C. § 1254 (1).....1

42 U.S.C. § 301-433.....3

Code of Federal Regulations 20 § 422.103.....4

Pennsylvania 75 Pa.CS. § 1510 (f).....6

OPINIONS BELOW

The Order of the Court of Appeals for the Third Circuit affirming the judgment of the District Court for the Middle District of Pennsylvania is reprinted in the appendix hereto APPENDIX A at 1a. The Judgment of the District Court is reprinted at APPENDIX B at 3a. The Memorandum of the District Court is reprinted at APPENDIX C at 4a

JURISDICTIONAL STATEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Third Circuit Court of Appeal's Opinion in this case reported as Case No. 95-7544.

STATUTORY PROVISIONS

This case simply involves the question of whether any law requires any person to apply for a social security account number absent a request for benefits, and whether a state can compel any person to obtain a social security account number in order to operate a motor vehicle. No such authority was presented.

STATEMENT OF THE CASE

The record shows that after several letters between appellant Martin, defendants Casey, and Tobin, it was apparent that the Bureau of Driver Licensing, Department of Transportation of the Commonwealth of Pennsylvania (Penn Dot) was adamantly refusing to issue a drivers license absent a social security

account number. The letters prior to the suit and the litigation in the District Court provided ample opportunity for the defendants to either bring forth a law requiring anyone to obtain a social security account number, or any reason why the applicable state law which provided for "other identifiers" was not utilized as a remedy.

ARGUMENT

A. Background of the Social Security Act.

The Social Security Act of 1935 was enacted because of the situation described in Helvering v. Davis, 301 US 619 (1937):

> Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. Home Bldg. & L. Asso. v. Blaisdell, 290 U. S. 398, 442, 78 L. ed. 413, 431, 54 S. Ct. 231, 88 A.L.R. 1481. Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the Chas. C. Steward Mach. Co. 301 U. S. 548, ante, 1279, 57 S. Ct. 883, 109 A.L.R. 1293, supra, has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near. Helvering v. Davis, 301 US 619 (1937).

Such was the stated purpose of the social security system at

its inception. Two major arguments were made against the act in 1937, Steward Machine Co. v. Davis, 301 U.S. 548, 57 S.Ct. 883 (1937), and Helvering v. Davis, 301 US 619, 57 S.Ct. 904 (1937). In Stewart Machine, an employer challenged the unemployment tax, and the retirement features were challenged by an employer in Helvering. Both were upheld by this Court since they were deemed to be an excise tax within the taxing clauses of the U.S Constitution. In both cases, the issue of whether there was a requirement for the American people to join such a system was not raised, for the simple reason that there was no such mandatory requirement for anyone to join the system.

B. Voluntary Nature of Social Security

Over the years, there was never any suggestion that enrollment in the system was mandatory. The social security act is codefied today at 42 U.S.C., §§ 301-433. Entering the social security system is mandatory, only if you are seeking a benefit. If there was a requirement that every person in this country must join the system, one would expect to find language similar to the following, "Every person over (a certain age) shall submit an application to the Social Security Administration". However, there is no such language contained anywhere in the law. Instead of relying on the statute as enacted by Congress, those who do not volunteer are exposed to a lifetime of coercion. Aside from the drivers license issue, public schools are demanding that school age children provide a number before they may be enrolled in any public school. Hospitals have been known to use unethical tactics to persuade new mothers to obtain numbers for their new born. Colleges and University enrollment demand SS numbers. Public utilities, banks and other entities demand numbers claiming that it is required by law. Most people dutifully follow the orders, assuming that **it is indeed**

required by some law. One must look to the U.S. Constitution to determine if that document grants Congress the power to enact a law **compelling** a domestic American to enroll in a compulsory retirement or benefits program. Such authority **cannot be found in the U.S. Constitution,** therefore, it **cannot be enacted into a Federal law,** and it has not been enacted. This Court clearly ruled on that issue in Railroad Retirement Board, et al., Petitioners, v. Alton Railroad Company, et al., 295 U. S. 330-392. Argued March 13 and 14, 1935. Decided May 6, 1935:

> Provision for free medical attendance and nursing, for clothing, for food, for housing, for the education of children, and a hundred other matters, might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. **Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things**? Is it not apparent that they are really and essentially related solely to the social welfare of the worker, and therefore remote from any regulation of commerce as such? **We think the answer is plain. These matters obviously lie outside the orbit of Congressional power.** Railroad Retirement Board, et al., Petitioners, v. Alton Railroad Company, et al., 295 U. S. 330, p 368, (1935) (emphasis added)

Can the appellant be forced to enter into an agreement Which this Court declared to be outside the orbit of Congressional authority? It would certainly appear that the answer is plain.

C. Whether Regulations Can Expand a Statute.

Since there is no statute that imposes a mandatory entry into social security, we look to the regulations for such a

duty. Code of Federal Regulations 20 § 422.103 simply states:

> (b) Applying for a number-
>
> (1) Form SS-5. An individual needing a social security number may apply for one by filing a signed form SS-5, "Application for A Social Security Number Card," at any social security office and submitting the required evidence.

It is to be noted that § 422.103 refers to "an individual needing a social security number may apply for one by filing a signed Form SS-5". However, (b) (2), attempts to bypass that procedure whereas the social Security Administration may enter into an agreement with officials of a State... ... "in assigning social security numbers to newborn children". That regulation reads as:

> **(2) Birth registration document.** SSA may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a form SS-5 and may request that SSA assign a social security number to the newborn child.

The regulation states that "SSA may enter into an agreement with officials of a State...". It is unfortunate that the child has no part in this agreement. A new mother, "as part of the official birth registration process, need not complete a Form SS-5 and may request that SSA assign a social security number to the newborn child".

This insidious practice takes advantage of the fatigued and weary new mother, who, by merely nodding her head is making a life long agreement for her child, and in fact, may be totally unaware of granting permission for a number. Of course this practice relieves the mother and father of making a rational decision on their own as to whether they wish to enroll their child into the system.

D. Social Security as a Contract

As noted in the appellant's brief to the Third Circuit, this Court informed the people in Flemming v. Nestor, 363 US 603, p. 603, 4 L Ed 2d 1435, pp. 1439 in pertinent part:

> The Social Security system may be accurately described as a form of **social insurance**, enacted pursuant to **Congress' power to "spend money in aid of the 'general welfare,'** " Helvering v. Davis, supra (301 US at 640), ... It is apparent that the **noncontractual interest of an employee** covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments. Flemming v. Nestor, 363 US 603, p. 603, 4 L Ed 2d 1435, pp. 1439. (emphasis added)

Unfortunately, by this Court's own words, it is a fact that one could pay into the system for 50 or more years and never realize any benefit. This discussion is necessary to demonstrate that when such knowledge is available to any young person, they have a duty to themselves and their family to fight any attempt to be forced into joining an unproductive financial debacle that was doomed for failure from the start. Obviously, protesting such an organization goes far beyond the drivers license issue.

E. Statutory Construction.

The Pennsylvania statute, 75 Pa.C.S. § 1510 (f), states, "The department may require **other identifiers,** including, **but not limited to**, a taxpayer identification number, before issuing the license." Because of those words placed in the law by the legislature, there is no reason for the Department of Transportation to refuse a license in this instance. The legislature **provided a remedy for this exact situation,** and the Department is bound by the content of that law. It must be presumed that the statutes enacted by the legislators for the Commonwealth of Pennsylvania mean what they say and say what they mean. Instead of accepting the statute as it was written, the Court effectively ruled that "other identifiers" could now be struck from the statute and the only identifying numbers permitted would be social security numbers. The District Court's Memorandum quoted FCC v. Beach Communications, Inc., 580 U.S. ___ , 113 S.Ct 2096 (1993), and other cases which concluded that "[t]he state decision-makers need not actually articulate the purpose or rationale supporting the classification; nor does the state have any obligation to produce evidence to sustain the rationality of its decision." In this case, there is no argument that the state must produce evidence to sustain the rationality of its decision. Its decision was stated in 75 Pa.C.S. § 1510 (f), which was enacted by the legislators with the following words, "The department may require **other identifiers,** including, **but not limited to,** a taxpayer identification number, before issuing the license." In areas of social or economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge, under the Federal Constitution's Fourteenth Amendment or under the due process clause of the Constitution's Fifth Amendment, if there is any reasonably conceivable state of facts that could provide a rational basis for the classification; where there are plausible reasons for an action by Congress, a court's inquiry is at an end; this standard is the paradigm of judicial

restraint. (Stevens, J., dissented from this holding.) FCC v. Beach Communications, Inc., 508 US ____, 124 L Ed 2d 211, 113 S Ct 2096.

The above case, held that "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge, under the Federal Constitution's Fourteenth Amendment...". Here, an analysis of the FCC v. Beach Communications, Inc., decision favors Martin in that the Pennsylvania statute **provides for a remedy** and the Fourteenth Amendment **upholds a fundamental right.** That fundamental right, is to be free from being forced to attach her name and signature to an application form against her will. Respondents, Pennsylvania Department of Transportation, stated in their Brief in support of Motion for Summary Judgment, Brf. p 8, "... it is also noteworthy that Ms. Martin is required by Federal law to obtain a social security number". Of course, respondents could produce no such law. Their citation of statutes and regulations in their Motion for Summary Judgment were shown to be non-existent. Martin's research clearly demonstrated that the authorities cited as "Federal law", were merely veiled threats that indicated what may happen if you refuse to voluntarily acquire a number. It is to be noted that Penn Dot did not pursue that phantom Federal law in the Third Circuit Court of Appeals, in fact, they didn't even file a Brief with the Third Circuit.

CONCLUSION

The Privacy Act, referred to in part on page 4 of the Form SS-5, Application for a Social Security Card, states, **"You do not have to give us these facts, but without them we cannot issue you a Social Security number or a card. Without a number, you could lose Social Security**

benefits in the future and you might not be able to get a job". That statement is in direct contrast to the statement from Mr. Vincent Sanudo, Director Office of Public Inquiries, Department of Health & Human Services who stated:

> The Social Security Act **does not require a person to have an SSN to live and work in the United States,** nor does it require an SSN simply for the purpose of having one. However, if someone works without an SSN, we cannot properly credit the earnings for the work performed. (emphasis added)

One statement says, "you might not be able to get a job", and the other states, "does not require a person to have an SSN to live and work in the United States". Both statements came from the same government. Which is correct? The Commonwealth of Pennsylvania takes the position that if they cannot force you to obtain a social security number they will merely forbid you from operating a motor vehicle on the highways of Pennsylvania in violation of health, safety, and welfare related goals. The District Court stated, "Plaintiff's refusal to obtain a social Security number is central to the instant dispute". The Court did not explain why any person would need a reason to refuse to sign an application that was not required by a law. It is presumed that the judges in the District Court and the Third Circuit have full control over their signatures, and likewise, such control may be freely exercised by all others. If the appellant is punished for a refusal to attach her signature to an application that is not required by law, it will show that every freedom contained in our Constitution could be eliminated in the same manner. These matters were thoroughly covered in appellant Martin's pleadings which were basically unopposed in this case. As stated in Martin's Brief to the Third Circuit, Penn Dot is attempting to **accomplish indirectly what it may not accomplish**

directly. It is the duty of this Court to prevent this destruction of our freedoms.

Respectfully submitted on this 24 day of October 1996.

Carie Marie Martin
1 Box 670 Simpson Road
Glen Rock, Pennsylvania 17327

Mailing address: Post Office Box 651
Manchester, Maryland 21102